



Request consultation notice due to existence of two practical refusal reasons under section 24AB of the *Freedom of Information Act 1982*

Information Law Section, Legal Services and Assurance Branch, Department of Veterans' Affairs

Applicant: Julie
Notice date: 26 November 2018
FOI reference number: FOI 25436
Sent by email: foi+request-4941-629aa1bc@righttoknow.org.au

Dear Julie

Freedom of Information Request: FOI 25436

I refer to your request for access to documents under the *Freedom of Information Act 1982* (**FOI Act**), received by the Department of Veterans' Affairs (**Department**) on 7 November 2018, made in the following terms:

Under FOI, I seek copy of any formal document (up to a maximum of 20 documents) that is used as a reference manual or training resource for Departmental staff, for Electronic Document and Record Management (EDRMS) functions.

I, Julie (Position Number 62212962), Legal Officer, Information Law Section, am an officer authorised by the Secretary of the Department to make decisions about access to documents in the Department's possession in accordance with section 23(1) of the FOI Act.

This is a notice of an intention to refuse your request, under section 24AB(2) of the FOI Act, because it gives rise to two practical refusal reasons:

- Your request does not provide such information as is reasonably necessary to enable the Department to identify some of the documents you are requesting (section 24AA(1)(a)(i) of the FOI Act); and
- to the extent that some documents can be identified, processing your request, as best the Department can understand the terms, is likely to result in a substantial and unreasonable

diversion of the Department's resources from its other operations (section 24AA(1)(b) of the FOI Act).

Consultation on scope of your request

On 21 November 2018, I informally consulted with you via email requesting confirmation if you are referring to the current reference manual or training resource for Departmental staff for HPE CM9.1.

As of the date of this notice, the Department has not received a response from you.

When does a practical refusal reason exist (section 24AA of the FOI Act)

Section 24(1)(b) of the FOI Act provides that:

- (1) For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:
 - (a) the work involved in processing the request:
 - (i) in the case of an agency--would substantially and unreasonably divert the resources of the agency from its other operations; or
 - (ii) in the case of a Minister-- would substantially and unreasonably interfere with the performance of the Minister's functions;
 - (b) the request does not satisfy the requirements in paragraph 15(2)(b) (identification of documents).

Why I intend to refuse your request

Identification of documents

Section 15(2)(b) of the FOI Act requires that a FOI request must provide such information concerning the documents sought as is reasonably necessary to enable a responsible officer of the Department to identify those documents.

Your request does not provide such information as is reasonably necessary to enable to the Department to identify the documents you are seeking.

You added commentary regarding the history of the Department's EDRMS programs and as such, it is unclear whether you are seeking for the current reference manual only, or for all reference manuals held by the Department for all EDRMS programs – past and present.

Further, while the Department predominantly uses HPE Content Manager (version 9.1) as its EDRMS, the Department also uses PDMS for ministerial and executive communication. PDMS is an EDRMS as well and it is unclear if you are also requesting reference manuals for PDMS as well as you have not specified this in your request.

You have also stated that you are limiting the documents “up to a maximum of 20 documents”. As discussed below, there are 1400 documents that may be relevant to your request. The Department is not in a position to determine and interpret which 20 documents you are requesting access to.

Substantial and unreasonable diversion from the Department’s other operations

To the extent that some documents can be identified from your request, processing your request would substantially and unreasonably divert the resources of the Department from its other operations.

The guidelines provided by the Office of the Australian Information Commissioner, at 3.54, provides that:

A request should be interpreted as extending to any document that might reasonably be taken to be included within the description the applicant has used.

As you have not specified a specific subject matter, it appears that you are requesting access to reference materials or training resources for all functions of the Department’s EDRMS such as finding, retrieving, creating records, management of the system, online training courses etc.

Following initial enquiries, I estimate that 117 hours of processing time is required to deal with this request. The reasons for this are as follows:

- I estimate that there are approximately 1400 documents that may be relevant to your request. These documents refer to the EDRMS programs as specified in your request.
- The relevant documents will need to be analysed and a decision made before they can be released to you. The documents subject to your request are in relation to the Department’s EDRMS functions. Such material may be exempt from disclosure under section 47E(d) of the FOI Act on the basis that disclosure of some of the information may have a substantial adverse effect on the proper and efficient conduct of the operations of the Department. I estimate that consideration of the exemption and applicable redactions in respect of such material would take approximately 116 hours to complete (based on 5 minutes per document to redact relevant material).
- Further to the previous point, a Statement of Reasons will still need to be provided to you. I anticipate that it would take approximately 3 hours to draft the Statement of Reasons and prepare the Schedule of documents for this decision, noting that any exemptions to be applied will need to be detailed.
- Approximately 1 hour was taken to identify relevant material.

Taking these factors into account, I have concluded the request as it currently stands is substantial.

For the purpose of providing this notice, I have considered whether the substantial resource burden would be unreasonable having regard to the following:

- 117 hours of processing time is, at face value, an unreasonable burden for a single FOI request, taking into account the need to process multiple requests at any given time, and the impact such a burden would have on responding to other FOI applicants and for the relevant business area to undertake their designated duties.
- Due to the broad nature of your request, the request includes the majority of your correspondence with the Department since 2011.

Taking these factors into account, I have concluded the request as it currently stands is unreasonable, as well as substantial (as outlined above).

What you should do?

You can revise the request in a form that would remove the ground for refusal. Please note that even if you do modify your request, it is possible that a practical refusal reason under section 24AA(1)(a)(i) may still exist or the Department may need further time to process your revised request. This will depend on the terms of your final request. As far as is reasonably practicable, we are happy to provide you with further information to assist you in revising your request so that it removes the practical refusal grounds.

If you are able to pinpoint the specific documents within your request, or clarify more particularly the information you are seeking, that would assist. In particular, you may wish to consider:

- restricting the date range to a smaller period of time; and
- limiting the scope to current reference manuals or training materials for current EDRMS.

Please note you have **14 days (by close of business 10 December 2018)** from the date you receive this notice to either:

- withdraw the request;
- make a revised request; or
- indicate that you do not wish to revise the request.

If you do not respond in one of these ways within 14 days the request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act. If you indicate you do not wish to revise your request, the Department will proceed to make a decision on whether to refuse the request on resource grounds under section 24(1) of the FOI Act.

If you need more time to respond, please contact the Information Law Section via the below contacts, within the 14 day period to discuss your need for an extension of time.

Please note under section 24AB(8) of the FOI Act, the time for processing your FOI requests is suspended from the day you receive this notice until the day you do one of the things listed above.

An extract of the provisions of the FOI Act that are relevant to this notice are set out at **Schedule 1**.

Contact us

If you would like to revise your request or have any questions, please contact me using the details listed below:

Post: Legal Services & Assurance Branch, Department of Veterans' Affairs

GPO Box 9998, Canberra ACT 2601

Facsimile: (02) 6289 6337

Email: information.access@dva.gov.au

Yours Sincerely,

Julie (Position Number 62212962)

Legal Officer

Information Law Section | Legal Services & Assurance Branch

Legal Assurance and Governance Division

26 November 2018



Schedule of relevant provisions in the FOI Act

15 Requests for access (as related to the requirements for requests)

Persons may request access

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

Requirements for request

- (2) The request must:
- (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
 - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
 - (b) postage by pre-paid post to an address mentioned in paragraph (a);
 - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

24 Power to refuse request--diversion of resources etc.

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
- (a) must undertake a request consultation process (see section 24AB); and
 - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists--the agency or Minister may refuse to give access to the document in accordance with the request.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
- (a) the requests relate to the same document or documents; or
 - (b) the requests relate to documents, the subject matter of which is substantially the same.

24AA When does a practical refusal reason exist?

- (1) For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:

- (a) the work involved in processing the request:
 - (i) in the case of an agency--would substantially and unreasonably divert the resources of the agency from its other operations; or
 - (ii) in the case of a Minister--would substantially and unreasonably interfere with the performance of the Minister's functions;
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:
- (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
 - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
 - (i) examining the document; or
 - (ii) consulting with any person or body in relation to the request;
 - (c) making a copy, or an edited copy, of the document;
 - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
- (a) any reasons that the applicant gives for requesting access; or
 - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
 - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

24AB What is a request consultation process?

Scope

- (1) This section sets out what is a request consultation process for the purposes of section 24.

Requirement to notify

- (2) The agency or Minister must give the applicant a written notice stating the following:
 - (a) an intention to refuse access to a document in accordance with a request;
 - (b) the practical refusal reason;
 - (c) the name of an officer of the agency or member of staff of the Minister (the contact person) with whom the applicant may consult during a period;
 - (d) details of how the applicant may contact the contact person;
 - (e) that the period (the consultation period) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), reasonable steps includes the following:
 - (a) giving the applicant a reasonable opportunity to consult with the contact person;

- (b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:
 - (a) withdraw the request;
 - (b) make a revised request;
 - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
 - (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
 - (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

Consultation period to be disregarded in calculating processing period

- (8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

No more than one request consultation process required

- (9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.